

AMENDED IN ASSEMBLY APRIL 22, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2846**

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**Introduced by Assembly Member Feuer**

February 22, 2008

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An act to ~~add Section 1369.525 to~~ amend Section 1365.1 of, and to add Section 1367.6 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2846, as amended, Feuer. Common interest developments: assessments.

The Davis-Stirling Common Interest Development Act provides for the creation and regulation of common interest developments and for the levying of assessments by homeowners' associations. Under the act, a homeowners' association or an owner of a separate interest in a common interest development may not file a civil action in the superior court relating to enforcement of the act or certain other matters unless the parties have endeavored to submit their dispute to alternative dispute resolution in accordance with specified procedures. This requirement does not apply to a small claims action or an assessment dispute. *The act requires an association to distribute a written notice regarding assessments and foreclosure to each member of the association during the 60-day period immediately preceding the beginning of the association's fiscal year, as specified.*

This bill would provide that, if a dispute exists between the owner of a separate interest and the homeowners' association regarding assessments imposed by the association, and the amount in dispute does not exceed the jurisdictional limits of the small claims court, the owner

of the separate interest may either request alternative dispute resolution in accordance with the procedures described above or pay the disputed amount under protest and commence an action in small claims court. The bill would ~~require the owner, if he or she elects to pay the disputed amount under protest, to provide written notice of this fact to the association at the time payment is made~~ *state the intent of the Legislature that an owner may, but is not obligated to, pay under protest any disputed charge or sum, and by so doing, specifically reserve the right to contest the disputed charge or sum in court or otherwise. The bill would make related changes to the notice described above.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1365.1 of the Civil Code is amended to  
2     read:

3     1365.1. (a) The association shall distribute the written notice  
4     described in subdivision (b) to each member of the association  
5     during the 60-day period immediately preceding the beginning of  
6     the association's fiscal year. The notice shall be printed in at least  
7     12-point type. An association distributing the notice to an owner  
8     of an interest that is described in Section 11212 of the Business  
9     and Professions Code that is not otherwise exempt from this section  
10    pursuant to subdivision (a) of Section 11211.7, may delete from  
11    the notice described in subdivision (b) the portion regarding  
12    meetings and payment plans.

13    (b) The notice required by this section shall read as follows:

14  
15           “NOTICE ASSESSMENTS AND FORECLOSURE

16  
17    This notice outlines some of the rights and responsibilities of  
18    owners of property in common interest developments and the  
19    associations that manage them. Please refer to the sections of the  
20    Civil Code indicated for further information. A portion of the  
21    information in this notice applies only to liens recorded on or after  
22    January 1, 2003. You may wish to consult a lawyer if you dispute  
23    an assessment.

ASSESSMENTS AND FORECLOSURE

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney's fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in excess of one thousand eight hundred dollars (\$1,800) or more than 12 months delinquent, an association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Section 1367.4 of the Civil Code. When using judicial or nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the amounts secured by the lien are not paid. (Sections 1366, 1367.1, and 1367.4 of the Civil Code)

In a judicial or nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 1367.1 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail, including a description of its collection and lien enforcement procedures and the method of

1 calculating the amount. It must also provide an itemized statement  
2 of the charges owed by the owner. An owner has a right to review  
3 the association's records to verify the debt. (Section 1367.1 of the  
4 Civil Code)

5 If a lien is recorded against an owner's property in error, the  
6 person who recorded the lien is required to record a lien release  
7 within 21 days, and to provide an owner certain documents in this  
8 regard. (Section 1367.1 of the Civil Code)

9 The collection practices of the association may be governed by  
10 state and federal laws regarding fair debt collection. Penalties can  
11 be imposed for debt collection practices that violate these laws.  
12

#### 13 PAYMENTS

14  
15 When an owner makes a payment, he or she may request a  
16 receipt, and the association is required to provide it. On the receipt,  
17 the association must indicate the date of payment and the person  
18 who received it. The association must inform owners of a mailing  
19 address for overnight payments. (Section 1367.1 of the Civil Code)

20 *An owner may, but is not obligated to, pay under protest any*  
21 *disputed charge or sum, including, but not limited to, an*  
22 *assessment, fine, penalty, late fee, or collection cost, and by so*  
23 *doing, specifically reserve the right to contest the disputed charge*  
24 *or sum in court or otherwise.*

25 An owner may dispute an assessment debt by submitting a  
26 written request for dispute resolution to the association as set forth  
27 in Article 5 (commencing with Section 1368.810) of Chapter 4 of  
28 Title 6 of Division 2 of the Civil Code. In addition, an association  
29 may not initiate a foreclosure without participating in alternative  
30 dispute resolution with a neutral third party as set forth in Article  
31 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of  
32 Division 2 of the Civil Code, if so requested by the owner. Binding  
33 arbitration shall not be available if the association intends to initiate  
34 a judicial foreclosure.

35 An owner is not liable for charges, interest, and costs of  
36 collection, if it is established that the assessment was paid properly  
37 on time. (Section 1367.1 of the Civil Code)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a timeshare may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the Civil Code)

The board of directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 1367.1 of the Civil Code)”

(c) A member of an association may provide written notice by facsimile transmission or United States mail to the association of a secondary address. If a secondary address is provided, the association shall send any and all correspondence and legal notices required pursuant to this article to both the primary and the secondary address.

**SECTION 1.**

*SEC. 2.* Section ~~1369.525~~ 1367.6 is added to the Civil Code, to read:

~~1369.525.~~

1367.6. (a) If a dispute exists between the owner of a separate interest and the association regarding assessments imposed by the association, and the amount in dispute does not exceed the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure, the owner of the separate interest may, in addition to pursuing dispute resolution pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4, do either of the following:

(1) Request alternative dispute resolution pursuant to ~~this article~~ Article 2 (commencing with Section 1369.510) of Chapter 7.

(2) Pay under protest the disputed amount of the assessments and commence an action in small claims court pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the Code of Civil Procedure.

~~(b) If the owner of a separate interest elects to pay the disputed amount under protest pursuant to paragraph (2) of subdivision (a);~~

1 ~~the owner shall provide written notice of this fact to the association~~  
2 ~~at the time payment is made.~~

3 *(b) It is the intent of the Legislature that an owner may, but is*  
4 *not obligated to, pay under protest any disputed charge or sum,*  
5 *including, but not limited to, an assessment, fine, penalty, late fee,*  
6 *or collection cost, and by so doing, specifically reserve the right*  
7 *to contest the disputed charge or sum in court or otherwise.*

8 *(c) Nothing in this section shall impede an association's ability*  
9 *to collect delinquent assessments as provided in Section 1367.1.*